IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1507/2004

PETITIONER : Bhuneshwer Sai , S/o Shri D. Sai, aged about 45 years, Chief Municipal Officer (Suspended) posted at Nagar Panchayat , Patthalgaon, Tahsil- Dharamjaigarh, Distt. Jashpur (C.G.).

- Versus -

RESPONDENTS : 1. State of Chhattisgarh, Through Secretary, Department of Environment & Urban Administration, Mantralaya, D. K. S. Bhawan, Shastri Chowk, Raipur (C.G.).

2. Collector, Jashpurnagar (C.G.)
3. Naib Tahsildar, Bagbahra, Tahsil- Patthalgaon District- Jashpur (C.G.)
4. Nagar Panchayat, Patthalgaon, Through its Chief Municipal Officer, Patthalgaon, District- Jashpur (C.G.)

P. R. No. 1508 dt. 31.12.04 Presented by Shri Bhaneshwar Rao Rai dated 31/12/04

Registered Copy 31/12/04 Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC.OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER.

Details of the petition.

1. PARTICULAR OF THE PETITIONER:

The petitioner is Chief Municipal Officer and has been placed under suspension by the Respondent No.2.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(73)

आदेश पत्रक

मामला क्रमांक W.P. 1507/2004 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

08.06.2004: -

Shri Sanjay K. Agrawal, learned counsel for the petitioner.

Shri Pramod Kumar Verma, learned Addl. Adv. General for the respondents 1 to 3.

None for respondent No.4

Heard.

The petitioner is a duly appointed Chief Municipal Officer as per the provisions of Madhya Pradesh State Municipal Service (Executive) Rules, 1973, (hereinafter referred to as rules of 1973). These rules have also been adopted by the State of Chhattisgarh. The respondent No.2, suspended the services of the petitioner and directed initiation of Departmental Enquiry against him, which, according, to the learned counsel for the petitioner is without jurisdiction as the respondent No.2 has not been conferred the power of appointing/disciplinary authority.

Learned counsel for the petitioner relied upon Rule 14 of the Rules of 1973 which is reproduced as under :

> "14. Appointments- (1) Subject to the provisions of the Act and these rules, State Government may make appointments for all categories of Chief Municipal Officers.
>
> (2) A candidate who without sufficient cause fails to join his appointment, when one is offered to him within one month of the date of receipt of such order, shall forfeit his claim to appointment."

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(74)

आदेश पत्रक

मामला क्रमांक W.P. 1507/09 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the petitioner submits that Rule 36 of the Rules of 1973 stipulates as under :

> "1. If having regard to the nature of charges and the circumstances in any case, the appointing authority is satisfied that it is necessary or desirable to place, under suspension, the member of the service against whom disciplinary proceeding is contemplated or is pending, it may subject to the provisions of sub-section 2 of Section 86 of the Act, pass an order placing him under suspension.
>
> 2. A member of the service detained in police custody, whether on a criminal charge or otherwise for a period longer than 48 hours, shall be deemed to have been suspended with effect from the date of detention under this rule.
>
> 3.A member of service against whom a criminal charge is pending may at the discretion of the appointing authority, be placed under suspension until the termination of the proceedings, if the charges are connected with his duties as a Municipal servant or is likely to embrace him in the discharge of his duties in the Municipality or involves moral turpitude.

Learned counsel for the petitioner placed reliance on the Full Bench decision of the Madhya Pradesh High Court in the matter of **Suresh Chandra Sharma Vs. State of Madhya Pradesh and Others, reported in 2000(2) MPLJ Page No. 530.** In the said ease, it has been held that the member of service can be

[पीछे देखिये

(73)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 1507/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

placed under suspension only by the appointing authority. In the instant case, the order of suspension has been passed by the Collector, which is without jurisdiction.

It is further submitted that the respondent No.2 has also ordered the initiation of departmental enquiry against the petitioner as per Annexure P.7 and it is stated that the said order has also been confirmed by the State Government. Learned counsel for the petitioner submitted that the order of suspension and also initiation of departmental enquiry has not been passed by the State independently.

So far as charge sheet, Annexure P.7 is concerned, learned counsel for the petitioner submitted that the respondent No.2 has applied Chhattisgarh Civil Service (Classification, Control and Appeal) Rules, 1966, (hereinafter referred to as rules of 1966), while issuing the charge sheet against the petitioner which is contrary to the provisions of law. Learned counsel further submitted that the rules of 1966 would not have been applied in the case of the petitioner as he is a member of the State Municipal Services and rules of 1973 have been separately framed for governance of the service conditions of the petitioner.

Having heard learned counsel for the petitioner and considered the facts and circumstances of the case, the order dated 12th March 2004 passed by respondent No.2 placing the petitioner under suspension and the departmental enquiry followed by the charge sheet dated 19th April 2004 issued by respondent No.2 are set aside. However, it is open to the State to consider afresh and may pass appropriate orders and/or initiate proceedings in accordance with law.

The petition is accordingly disposed of.

Sd/-
Fakhruddin
Judge

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